IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 796

LARRY CAMPBELL, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

REPLY BRIEF FOR PETITIONER

The Insufficiency of the Evidence to Sustain a Conviction

In its strained attempt to support the conviction of petitioner in the face of the total insufficiency of the evidence, the Government has now taken the novel position that petitioner's guilt can be shown simply by the acts of others, without any proof of petitioner's connection therewith. It thus baldly contends, without a shred of evidence to support such contention, that petitioner was the "obvious link between petitioner Hoffa (whose guilt [the Government contends] was established by government witness Partin) and peti-

tioner Parks (whose guilt [the Government contends] was established by juror Fields' son and by Walker, who testified as government witnesses)." (Govt. Br. 43). In support of this patently unwarranted proposition, the Government cites *Pinkerton* v. *United States,* 328 U.S. 640, and *Nye and Nissen* v. *United States,* 336 U.S. 613. These cases actually highlight the absolute void of *any* evidence in this case to sustain petitioner's conviction.

In *Nye and Nissen,* the Court held: (336 U.S. at 619)

> "In order to aid and abet another to commit a crime it is necessary that a defendant *'in some sort associate himself with the venture, that he participate in it as in something that he wishes to bring about, that he seek by his action to make it succeed.'* L. Hand, Jr. in United States v. Peoni (CCA2d NY) 100 F2d 401, 402." (Emphasis supplied).

In both *Pinkerton* and *Nye and Nissen,* the defendants were charged with the commission of a conspiracy and substantive offenses. *Pinkerton* recognized that the commission of the substantive offense and a conspiracy to commit that offense are separate and distinct offenses. The two defendants were there convicted of the conspiracy and of the substantive offenses. The convictions on the substantive offenses were affirmed, even though there was proof of their commission by only one defendant, since at the time the substantive offenses were committed both defendants "were parties to an unlawful conspiracy and the substantive offenses charged were in fact committed in furtherance of it." 328 U.S. at 645.

Similarly, in *Nye and Nissen,* an individual and a corporate defendant were convicted of a conspiracy to defraud the United States, and with the substantive offenses of misrepresenting invoices. The Court reaffirmed that a conspirator could be found guilty of a substantive offense committed by another, if the substantive offense was committed in furtherance of the conspiracy which the defendant had joined, and that this theory could be submitted to the jury under the aider and abettor law. In that case, there was evidence that the individual defendant was the promoter of a long and persistent scheme to defraud; there was evidence that the making of false invoices was a part of that project; there was evidence that the makers of the false invoices *were the defendant's subordinates;* there was evidence that his family was the chief owner of the business, and that he was the *manager* of and *in charge of the offices* where the false invoices were made out.

How totally different is the situation here! The totality of the Government's case against petitioner is that a number of telephone calls were made during a twenty-four day period between petitioner and his uncle, a co-defendant. There was no proof of the content of these calls. Can the Government reasonably contend that these calls, the petitioner's family relationship to a co-defendant, and petitioner's minor position in the Teamsters Union are sufficient to prove that petitioner associated himself with a criminal venture, that he participated in it, and that he sought "by his action to make it succeed"? The evidence was that Parks' alleged attempt to reach the juror Fields occurred on only one day (II D.A. 731a-742a). Can it be reasonably contended, without other proof, that

telephone calls of unproven content by members of a family during a twenty-four day period were sufficient to prove that petitioner either knew of a criminal venture or participated by his own act therein?

It is submitted that the evidence does not disclose a single act by petitioner which would constitute the remotest participation in any criminal activity, and that his conviction violates the basic concepts of due process of law.

Respectfully submitted,

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